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STATE OF ALABAMA

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APR 27 1990

Honorable Timothy R. Mims
Mayor
P.O. Box 9
Maplesville, Alabama 36750

Municipal Courts - Chief of
Police - Municipal Employees -
Magistrates - Compensation

Although there are no general
laws prohibiting the appointment
of the wife of the chief of
police as the municipal court
clerk and magistrate, a
magistrate must be neutral and
detached from all law enforcement
activities.

Dear Mayor Mims:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTION

Is the wife of the Chief of Police of
Maplesville prohibited from serving as the
municipal court clerk and magistrate for the
Town of Maplesville?

FACTS AND ANALYSIS

This office has previously held that there are no general
laws prohibiting the appointment of the spouse of an assistant
chief of police as the chief clerk/magistrate for the municipal
court. Opinion to Honorable P. L. Woods, Mayor, City of Jasper,
under date of January 8, 1985. It should be noted that the state

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nepotism law only applies to state officials and employees; however, several municipalities have local civil service statutes which prescribe conditions under which relatives may not be employed. You should determine whether the Town of Maplesville has such a statute.

Although there are no general laws prohibiting such an appointment, a magistrate must be neutral and detached from all law enforcement activities. Rule 18, Alabama Rules of Judicial Administration. In determining whether a person is neutral and detached, the United States Supreme Court has looked to the following factors: (1) the possibility of affiliation with prosecution and police; (2) assignment to police supervision; and (3) connection with law enforcement activities. Shadwick v. City of Tampa, 407 U.S. 345 (1972).

Whether the spouse of the police chief is neutral and detached is a factual question which this office cannot answer. Before an appointment is made, the city should consider the factors listed above.

Any issues relating to the State Ethics Law should be submitted to the State Ethics Commission.

CONCLUSION

Although there are no general laws prohibiting the appointment of the wife of the chief of police as the municipal court clerk and magistrate, a magistrate must be neutral and detached from all law enforcement activities.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General
By:



BRENDA FLOWERS
Assistant Attorney General

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